

PUBLIC LAW BOARD NO. 7633

Brotherhood of Maintenance
of Way Employees Division - IBT Rail Conference

and

Union Pacific Railroad Company
(Former Missouri Pacific Railroad Company)

Case No. 182
Award No. 182

STATEMENT OF CLAIM: “Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) of Mr. T. Riley, by letter dated July 29, 2020, for alleged violation of Rules 1.6: Conduct – Careless; 56.1.3: Compromising Signal System Safety; and Rule 1.6 Conduct – which stipulates ‘... any act of hostility, misconduct, or willful disregard or negligence affecting the interest of the company or its employees is cause for dismissal and must be reported. Indifference to duty or to the performance of duty will not be tolerated.’ (Employees’ Exhibit ‘A-1’) was exceedingly harsh, imposed without the Carrier having met its burden of proof and in violation of the Agreement (System File 082620/1741936 MPR).
2. As a consequence of the violation referred to in Part 1 above: Claimant T. Riley’s ‘... discipline must be rescinded and Mr. Riley must be allowed to exercise his seniority per the agreement, and he must be made whole for all losses of compensation and benefits that resulted from the Carrier’s unjust and improper discipline and any other remedies as prescribed (sic) Rule 22 (f).’ (Employees’ Exhibit ‘A-4’).”

FINDINGS

Public Law Board No. 7633, upon the whole record and all the evidence, finds the parties involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction of the dispute herein; the parties were given due notice of hearing before this Board and they participated therein.

The Claimant was disciplined pursuant to a Notice of Investigation dated July 2, 2020, Investigation held July 13, 2020, “... to develop the facts and determine your responsibility, if any, in connection with the below charge.

On 06/30/2020 the Carrier gained knowledge that you were allegedly were in violation of Carrier's rules when you compromised signal safety at or near a public road crossing. This is a possible violation of the following rule(s) and/or policy:

1.6: Conduct – Carelessness of safety
56.1.3: Compromising signal safety
Rule 1.6: Conduct – which reads:

“Any act of hostility, misconduct or willful disregard or negligence affecting the interest of the company or its employees is cause for dismissal and must be reported”

Under the MAPS Policy, this violation is a Dismissal event. Based upon your current status, if you are found to be in violation of this alleged charge, Dismissal may result.”

In a discipline letter dated July 29, 2020, the Carrier found that “... the evidence more than substantially supports the charges against you. The following charge has been sustained:

On 06/30/2020, while employed as a M/O (Ats) Tamper, you were in violation of Carrier's rules when you compromised signal safety at or near a public road crossing. This is a violation of the following rule(s) and/or policy:

1.6: Conduct – Careless
56.1.3: Compromising Signal System Safety

Additionally, **Rule 1.6: Conduct** stipulates that any act of hostility, misconduct, or willful disregard or negligence affecting the interest of the company or its employees is cause for dismissal and must be reported. Indifference to duty or to the performance of duty will not be tolerated.

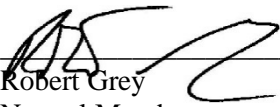
Based on your current record, you are hereby dismissed from all service with the Union Pacific Railroad.”

The Organization appealed the discipline and the Carrier denied the appeals. The dispute was not resolved during a settlement conference and progressed to arbitration. This matter is now before the Board for final and binding resolution. The Board has carefully reviewed the entire record in this case, including the arguments and awards provided in support of the parties' respective positions, whether or not specifically addressed herein.


The Board finds that the Carrier did not meet its burden of proof. Therefore, the Claim must be sustained.

AWARD

Claim sustained. Pursuant to Rule 22(f) of the parties' Agreement Claimant is reinstated to service at Claimant's former position, with full seniority unimpaired, and afforded the remedy provided therein. Claimant's record shall not contain any MAPS status pertaining to this matter. The Carrier is directed to comply with this Award on or before 30 days following the date by which any two members of the Board have affixed their signatures hereto.


Robert Grey
Neutral Member


Christopher Bogenreif
Carrier Member


John Schlismann
Organization Member

February 13, 2023
Dated